THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.6803 OF 2005

Disposed of on 11-08-2005.

Between:

B.V.Bhaskar Reddy ……..petitioner

And

The District Collector, Kadapa ……..respondent

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.6803 OF 2005

O R D E R :

1. This Writ Petition has been filed by B.V.Bhaskar Reddy assailing the proceedings

of 1st respondent-District Collector, Kadapa in Roc.No.131/2005-A4, dated 21.3.2005 insofar as restricting the sand lifting area.

2. The District Level Committee represented by its Chairman issued a tender-cum-public auction in proceedings dated 3.2.2005 calling for tenders for sand quarrying and transportation from Kadapa/Rajampet/ Jammalamadugu divisions for the years 2005-06. As per G.O.Ms.No.1, dated 1.1.2001, the petitioner submitted a sealed tender on 19-2-2005 for sand quarrying of Adinimmayapalle village of Vallur Mandal. He participated in the public auction on 19.2.2005 and quoted Rs.24,50,000/- whereas in the sealed tender he quoted Rs.26,00,000/-. As per the conditions incorporated in the tender cum public auction and notification, the highest amongst the two will be taken into consideration and he will be treated as the highest bidder. The petitioner has been declared as the highest bidder having quoted Rs.26,00,000/-. He deposited one fourth of the upset price i.e. Rs.6,50,000/- of the bid amount on 21.2.2005 i.e. the next immediate working day of the public auction. One L.Sreerami Reddy who happened to be the second highest bidder having quoted Rs.9,00,000/- in sealed tender and Rs.25.00 lakhs in the public auction submitted a representation to the 1st respondent to cancel the entire process of auction and to proceed for fresh auction. Thereupon, the petitioner made a representation to 1st respondent on 21.2.2005 and on 26.2.2005. Since 1st respondent did not take any action to confirm the auction, W.P.No.5279 of 2005 came to be filed by the petitioner. Pending the writ the 1st respondent issued the impugned proceedings dated 21.3.2005 confirming the auction in favour of the petitioner subject to certain conditions such as sand lifting has to be made from upper reach of Adinimmayapalli anicut leaving a distance of 500 mts from the anicut towards upstream side in penna river to a distance of 2 kms. The petitioner withdrew the said writ petition reserving liberty to challenge the order issued by the 1st respondent. Thus, the instant writ petition.

3. It is averred in the writ affidavit that 1st respondent imposed restrictions while confirming the auction at the instance of L.Srirama Reddy who became unsuccessful in securing the tender. It is further averred that auctions were held in more than 14 gram panchayats and in none of the gram panchayats 1st respondent

has imposed such of conditions while confirming the auctions and hence the action of 1st respondent is arbitrary and malafide.

4. 2nd respondent filed counter affidavit. One M.Satya Prakash, District Panchayat Officer, Kadapa has sworn to the counter affidavit. It is stated in the counter that District Level Committee (Sand Auctions) desired to regulate the sand quarrying operations all over the district of Kadapa duly taking into account of depletion of ground water and enormous sand requirement . The District Level Committee (Sand Auctions) in its resolution-dated 16.9.2004 constituted three teams, division-wise, to identify the sand reaches, where from sand quarrying can be allowed. The above teams after thorough investigation identified out of 31 reaches only 14 reaches are feasible for conducting sand auctions. They are :

Name of the Sand quarry	Name of the Mandal
Adinimmayapalli	Vallur
Kothagangireddypalli	Pendlimarri
Ramanapalli	Chennur
Takkolu	Sidhout
Jyothi	Sidhout
Darjipalli	Ontimitta
Gundlur	Rajampeta
Mandapalli	Rajampeta
Madanagopulapuram	Rajampeta
Narayananellur	Penagalur
Narasingarajupuram	Penagalur
Sunnapurallapalli	Jammalamadugu
Devagudi	Jammalamadugu
Peddadandlur	Jammalamadugu

The reports submitted by the teams were discussed by the District Level Committee (Sand Auctions), Kadapa on 3.12.2004 and the District Level Committee (Sand Auctions) accorded permission to conduct tender cum public auction to the above reaches. Accordingly a notice of tender cum public auction of the sand reaches of Kadapa District was issued on 3.2.2005 furnishing the details of the names of the

sand reaches, their upset prices, auctioning authority, time and venue of the auction. The petitioner participated in the public auction on 19.2.2005 and quoted an amount of Rs.24,50,000/- and offered an amount of Rs.26,00,000/- in sealed tender, who was the highest bidder/tenderer. After the auctions have been conducted for Adinimmayapalli reach, one L.Srirama Reddy has submitted a representation to the Joint Collector stating that he had participated in the auction dated 19.2.2005 held in Sabha Bhavan and that he offered a bid amount of Rs.25.00 lakhs since the ground water Department had reported that sand has to be lifted in the upper reach of Adinimmayapalli anicut. Had it been the down reach, he would have offered the bid amount of Rs.30.00 lakhs. He is willing to pay Rs.30.00 lakhs if this sand reach is located in the down stream of the anicut. The Deputy Director, Ground Water Department was requested to verify the facts put forth by L.Sriram Reddy. Accordingly, the Deputy Director, Ground Water Department has submitted his report stating that sand lifting can only be permitted in the upstream of Adinimmayapalli anicut leaving 500 meters from the anicut towards upstream side in Penna river bed to a distance of 2 kms. Basing on the report submitted by the Deputy Director, Ground Water Department. The auction of sand reaches of Adinimmayapalli was confirmed in favour of the petitioner under Rule 23(4) The A.P.Water Land and Trees Rules, 2002 quarrying within 500meters of any ground water extraction structure either irrigation or drinking water purpose is prohibited. So the orders issued with the condition of leaving 500 meters area is not illegal. The report of the Technical Committee suggests that the sand can be lifted from the upper reach area of Adinimmayapalli anicut to an extent of 2 KM duly leaving 500 meters distance from the anicut. The condition mentioned in the annexure are in accordance with the provisions laid down in APWALTA (Rule 23), which stipulates that:

1. The sand leaseholders shall not carryout quarrying within 500 m of any existing structure such as bridges, dams, weirs or any other cross drainage structure.

2. Vehicles carrying sand shall not ply over the flood banks except at crossing points or bridges or on a metal road.

3. Permission to quarry sand shall not be granted within 500 meters of any ground water extraction structures either for irrigation or drinking water purposes.

The distance between Gandi to Ramannapalli is 5.70 KM and the distance between Lingampalli and Takkolu village is 4.40 KM. These reaches were inspected by the technical teams especially the Ground Water Department officials. After thorough inspection they reported that sand quarrying can be allowed in the areas specified in their reports.

6. Heard learned counsel appearing for the petitioner and learned Government Pleader for Panchayat Raj and Rural Development appearing for respondents 1 to 3.

7. Learned counsel appearing for the petitioner submits that the Chairman, District Level Committee having conducted tender cum public auction for sand reaches situated within Adinimmayapalli village and on receiving of one fourth of the bid amount is not justified in restricting the area of sand quarrying while confirming the bid. He further submits that the 1st respondent was not justified in asking for the report of the ground water Department basing on the complaint of L.Sriram Reddy who became unsuccessful in the tender cum public auction and the very initiation of action basing on the said complaint is nothing but motivated and arbitrary. He would further submit that similar complaints were made to 1st respondent in respect of other sand quarrying reaches. But, 1st respondent did not take any action and therefore calling for the report from the Ground Water Department in respect of sand reaches for which the petitioner has become a successful bidder amounts to clear violation of the provision of Article 14 of the Constitution of India. He nextly contends that 1st respondent put the sand quarrying in respect of some villages despite the report of the Ground Water Department whereunder the Department has specifically reported that the quality of ground water is poor in those villages. He refers to copy of the note of survey conducted to assess the effect of sand mining on ground water regime in penna river from Mulapaka of Chemmullapalli Panchayat to Obulampalli of Gurrampudu Panchayat of Khajipet and Chennur Mandals respectively, Kadapa District. In nutshell, his submission is that initiating action by 1st respondent on the complaint of L.Sriram Reddy who became unsuccessful in the tender cum public

auction is highly motivated and arbitrary.

8. Learned Government Pleader for Panchayat Raj and Rural Development appearing for respondents 1 to 3 submits that 1st respondent called for the report from the Ground Water Department, Kadapa and the said report was duly considered while confirming the bid in favour of the petitioner and therefore the action of 1st respondent cannot be found fault. As per the tender cum public auction notification the sand reaches in Adinimmayapalli Gram Panchayat have been put to auction and the extent of the area is not notified. It is the version of 1st respondent that he called for the report from the Ground Water Department in view of the complaint received from L.Sriram Reddy and thereafter he took into consideration the report of the Ground Water Department while confirming the auction. The sand reaches situated in Adinimmayapalli Gram Panchayat are in the down stream and upstream of anicut. In the confirmation order dated 21.3.2005 the bid of the petitioner was confirmed but he was permitted to lift the sand from upper reachs of Adinimmayapalli anicut, leaving a distance of 500 m from the anicut towards upstream side in Penna river bed to a distance of 2 KMs. For better appreciation I may refer the relevant portion of the confirmation order and it is thus:

> " Accordingly the Deputy Director (Gw) Department, Kadapa has submitted his report in his reference No.1747/HG/SM/2005, Dated. 28.2.2005 as discussed hereunder:
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> " Under the prevailing hydrogeological conditions explained above it is suggested that there is no scope for sand mining from Adinimmayapali anicut to Chennur bridge. Sand lifting can only be permitted in the upper reach of Adinimmayapalli anicut, leaving a distance of 500 m from the anicut towards upstream side in Penna river bed to a distance of 2 KM."
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> Therefore, in exercise of the powers conferred in G.O. 3rd read above the auction of the rights of sand quarrying from upper reach of Adinimmayapalli anicut leaving a distance of 500 mts from the anicut towards upstream side in penna river to a distance of 2 Kms is hereby confirmed in favour of Sri.B.V.Bhaskar Reddy, the highest Tenderer/bidderers, S.Narasimha Reddy, Linga Reddy Street, Proddatur (v), Proddatur Mandal for a period of one year from the date of execution of the lease deed subject to the conditions laid

down in the annexure enclosed herewith.

The above successful tenderer/bidder is hereby informed to pay the 75% of the knocked down amount and execute the lease deed in form G-1 on stamped paper as per the Registration and Stamp Act within a week from the date of issue of this order as per the conditions laid down in G.O.3rd read above.

The above successful Tenderer/Bidder is further informed that, if he fails to pay the remaining 75% of the knocked down amount within the stipulated period as mentioned in this order, the amount so far paid by the successful Tenderer/Bidder shall be forfeited to the Government."

It is explicit from the above referred order passed by the 1st respondent that he has taken note of the report submitted by the Ground Water Department while restricting the operation of sand lifting. The 1st respondent called for the report of Ground Water Department basing on the complaint submitted by L.Sriram Reddy who became unsuccessful in the tender cum public auction. It has come on record that similar complaints have been filed in respect of some other reaches also. It is not clear from the record as to whether 1st respondent has initiated the similar action in respect of the said complaint. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such , all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Welfare State requiring the State to discharge its wide ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the touchstone of Article 14. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be

unconstitutional. The basic requirement of Article 14 is fairness in action by the State and the State cannot be permitted to act otherwise in any field of its activity irrespective of the nature of its function when it has the upper most duty to be governed by the rule of law. Non-arbitrariness, in substance, is only fair play in action. This obvious requirement must be satisfied by every action of the State or its instrumentality in order to satisfy the test of validity. Every State action has to be for a public purpose and must promote public benefit. All State actions 'whatever their mien are amenable to constitutional limitations, the alternative being to permit them to flourish as an imperium in imperio'. Every State action must be reasonable and in public interest and an infraction of that duty is amenable to judicial review. The extent of permissible judicial review was indicated by saying that actions are amenable to judicial review only to the extent that State must act validly for a discernible reason, but not whimsically for any ulterior purpose. The scope of judicial review is limited as indicted in DWARKADAS MARFATIA AND SONS v. BOARD OF TRUSTEES OF THE PORT OF BOMBAY to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the court to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done was fair and reasonable in the facts and circumstances of the case.

9. The facts narrated in the aforesaid paras clearly indicate that the 1st respondent swiftly acted on the complaint of L.Sriram Reddy, who was unsuccessful in the tender cum public auction, and proceeded to call for the report from the Ground Water Department. Had 1st respondent shown the same enthusiasm in calling for the reports from Ground Water Department in respect of other Gram Panchayats, he could not have been found fault in initiating action basing on the complaint of L.Sriram Reddy in respect of sand quarrying situated in Adinimmayapalli Gram Panchayat. I am leaving the matter here without making any further observation. I hope and trust that 1st respondent would call for the reports from the Ground Water

Department in respect of sand quarrying situated in other Gram Panchayats since the material placed on record disclosed that some complaints were pending against the sand quarrying of that village also. Be that as it may, the 1st respondent acted on the report of the Ground Water Department. It is not for this Court to comment on the report submitted by the Ground Water Department. The 1st respondent having notified the sand quarrying situated at Adinimmayapalli Gram Panchyayat cannot restrict the area of operation while confirming the auction. There are only two alternatives to him; either he should confirm the bid in favour of the petitioner or cancel it in view of the report submitted by the Ground Water Department and go for fresh tender cum public auction.

10. In the result, this writ petition is allowed setting aside the proceedings of 1st respondent-District Collector, Kadapa in Roc.No.131/2005-A4, dated 21.3.2005 and giving liberty to 1st respondent to pass appropriate orders with regard to confirmation of auction. Till the 1st respondent passes appropriate orders, no temporary permissions shall be granted for lifting the sand in the Gram Panchayat in question. No costs.

Dated: 11-08-2005. (B.Seshasayana Reddy, J)

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THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.6803 OF 2005

Dated: 11-08-2005.